

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

In the Matter of the Application of)
McDATA CORPORATION, COMPUTER)
NETWORK TECHNOLOGY CORPORATION and)
BROCADE COMMUNICATIONS SYSTEMS, INC.)
For Approval of the Indirect)
Transfer of Control of Computer)
Network Technology Corporation)
and the Related Name Change of)
Computer Network Technology)
Corporation to Brocade Services)
Corporation.)

DOCKET NO. 2006-0433

DECISION AND ORDER NO. 23182

Filed January 5, 2007
At 12 o'clock P.M.

DIV. OF CONSUMER ADVOCACY
DEPT. OF COMMERCE AND
CONSUMER AFFAIRS
STATE OF HAWAII

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Broder K. Kane

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DECISION AND ORDER

By this Decision and Order, the commission waives the requirements of Hawaii Revised Statutes ("HRS") §§ 269-7(a) and 269-19 and Hawaii Administrative Rules ("HAR") §§ 6-61-101 and 6-61-105, to the extent applicable, with respect to the joint petition of MCDATA CORPORATION ("McDATA"), COMPUTER NETWORK TECHNOLOGY CORPORATION ("CNT") and BROCADE COMMUNICATIONS SYSTEMS, INC. ("Brocade") (collectively, "Petitioners") to approve certain transactions that would 1) indirectly transfer control of CNT to Brocade, and 2) change CNT's name to Brocade Services Corporation (collectively, "Proposed Transaction").¹

¹Joint Petition of McDATA Corporation, Computer Network Technology Corporation and Brocade Communications Systems, Inc. for Approval of the Indirect Transfer of Control of Computer Network Technology Corporation and the Related Name Change of Computer Network Technology Corporation to Brocade Services Corporation, filed on October 30, 2006 ("Petition").

I.

Background

A.

Description of Subject Entities

1.

CNT

CNT is a corporation organized under the laws of the state of Minnesota, operating as both CNT and McDATA Services Corporation. CNT is a wholly owned subsidiary of McDATA, acquired by McDATA in 2005. In Hawaii, CNT is authorized to provide resold and facilities-based telecommunications services, pursuant to Decision and Order No. 20944, filed on April 30, 2004, in Docket No. 03-0412. In addition to Hawaii, CNT is authorized to provide telecommunications services in forty-five (45) other states and the District of Columbia. It is also authorized by the Federal Communications Commission to provide international and domestic interstate telecommunications services as a non-dominant carrier.

2.

McDATA

McDATA is a publicly traded Delaware corporation headquartered in Broomfield, Colorado. McDATA does not hold any authorizations relating to the provision of telecommunications

The Petition was served on the DIVISION OF CONSUMER ADVOCACY, DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS ("Consumer Advocate"). Pursuant to HRS § 269-51 and HAR § 6-61-62, the Consumer Advocate is an ex officio party to all proceedings before the commission.

services. Petitioners state that McDATA "designs, develops, markets, sells and supports data storage networking and application infrastructure management solutions involving hardware, firmware, software, professional services, connectivity and remote systems monitoring."²

3.

Brocade

Brocade is a Delaware corporation with its principal offices in San Jose, California. Brocade does not hold any authorizations relating to the provision of telecommunications services. Brocade "designs, develops, markets, sells, and supports" data storage networking and application infrastructure management solutions.³ Petitioners state that Brocade's products and services are marketed worldwide.

B.

Petition

In its Petition, Petitioners state that McDATA and Brocade have entered into an Agreement and Plan of Reorganization, dated August 7, 2006 ("Agreement") whereby Brocade will acquire McDATA in an all stock transaction. Worldcup Merger Corporation ("Merger Sub"), a wholly owned subsidiary of Brocade created for the purposes of the Proposed Transaction will be merged with and into McDATA, with

²Petition at 3.

³Id. at 4.

McDATA surviving the merger. The merger will be accomplished by first, canceling the Class A and Class B common stock of McDATA, and second, converting Merger Sub's stock into common stock of McDATA.⁴ As a result of the merger, CNT will become a wholly owned indirect subsidiary of Brocade. Upon becoming a subsidiary of Brocade, CNT will change its name to "Brocade Services Corporation."

Petitioners state that subsequent to completion of the Proposed Transaction, CNT will continue to offer its services to its consumers and that CNT's customers will continue to receive service under the same rates, terms and conditions of service as before.⁵ Additionally, they claim that the Proposed Transaction is in the public interest in that it will increase competition in the Hawaii telecommunications market by reinforcing CNT's status as a viable competitor, and that the Proposed Transaction will be virtually transparent to Hawaii consumers.

C.

Consumer Advocate's Statement of Position

On November 30, 2006, the Consumer Advocate filed its statement of position ("Statement of Position") recommending that the commission waive its investigative and approval authority under HRS §§ 269-7(a) and 269-19, with respect to the

⁴Petitioners assert that under the terms of the Agreement, McDATA stockholders will receive 0.75 shares of Brocade common stock for each share of McDATA Class A and Class B common stock they hold.

⁵CNT currently does not have any customers in Hawaii, therefore does not need to provide notice of the changes resulting from the Proposed Transaction. Petition at 6.

Proposed Transaction. The Consumer Advocate cites CNT's role as a non-dominant carrier in Hawaii (noting that CNT currently does not have any customers in Hawaii),⁶ Petitioners' assertion that the results of the Proposed Transaction will be transparent to its customers, and asserts that competition should continue to serve the same purpose as public regulation even if the result of the Proposed Transaction is a failure of the merged operations.⁷

Should the commission decline to waive the investigatory and approval provisions, the Consumer Advocate does not object to approval of the Petition for the above-stated reasons. The Consumer Advocate, however, recommends that commission waiver, or in the alternative, approval of the Proposed Transaction, should be conditioned upon Petitioners filing with the commission and the Consumer Advocate copies of CNT's: (1) amended authority to transact business in the State of Hawaii reflecting the name change; (2) revised tariff reflecting the name change; and (3) most recent audited financial statements, and if more than three months have elapsed since the date of the most recent audited financial statement, a current, unaudited financial statement.

II.

Discussion

HRS § 269-16.9 allows the commission to waive regulatory requirements applicable to telecommunications

⁶Statement of Position at 5.

⁷Id. at 6.

providers if it determines that competition will serve the same purpose as public interest regulation. Specifically, HAR § 6-80-135 permits the commission to waive the applicability of any of the provisions of HRS chapter 269 or any rule, upon a determination that a waiver is in the public interest.

In this docket, we find, at this time, that the telecommunications services currently provided by CNT are fully competitive, and that CNT is a non-dominant carrier in Hawaii. The commission also finds that the Proposed Transaction is reasonable and consistent with the public interest, and that competition, in this instance, will serve the same purpose as public interest regulation. Thus, the commission concludes that the requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, should be waived with regards to the matters in this docket, pursuant to HRS § 269-16.9 and HAR § 6-80-135.⁸ Similarly, based on the findings and conclusions stated above, we will also waive the provisions of HAR §§ 6-61-101 and 6-61-105, to the extent that the Petition fails to meet any of these filing requirements. Finally, the commission finds that Petitioners' request for commission approval of CNT's name change, to Brocade Services Corporation, should be approved. As noted

⁸See Decision and Order No. 18454, filed on March 28, 2001, in Docket No. 00-0443. The commission will continue to examine each application or petition and make determinations on a case-by-case basis as to whether the applicable requirements of HRS §§ 269-7(a) and 269-19 should be waived. Thus, the commission's waiver in this instance of the applicability of HRS §§ 269-7(a) and 269-19 should not be construed by any public utility, including Petitioners, as a basis for not filing an application or petition regarding similar transactions that fall within the purview of these statutes.

above, CNT currently does not have any customers in Hawaii, so any effect of the name change, from CNT to Brocade Services Corporation, will be negligible, if any.

With regard to the Consumer Advocate's recommendation that CNT provide copies of (1) its amended authority to transact business in the State of Hawaii reflecting the name change, (2) a revised tariff reflecting CNT's name change, and (3) its most recent audited financial statements, and if more than three months have elapsed since the date of the most recent audited financial statement, a current, unaudited financial statement, the commission finds this request, with the exception of (3),⁹ above, to be reasonable and in the public interest and concludes that CNT should provide copies of (1) its amended authority to transact business in the State of Hawaii reflecting the name change, and (2) a revised tariff reflecting the name change.

III.

Orders

THE COMMISSION ORDERS:

1. The requirements of HRS §§ 269-7(a) and 269-19, to the extent applicable, are waived with respect to the Proposed Transaction, described in the Petition filed on October 30, 2006.

2. Petitioners' request for commission approval of CNT's name change to Brocade Services Corporation, is approved.

⁹Since the commission is waiving the applicable financial filing requirements set forth in HAR §§ 6-61-101 and 6-61-105, the need for financial statements is eliminated.

3. To the extent that the Petition does not fully comply with the filing requirements of HAR chapter 6-61, those requirements, including HAR §§ 6-61-101 and 6-61-105, are waived.

4. CNT shall provide copies of its amended authority to transact business in the State of Hawaii reflecting the name change, and a revised tariff reflecting CNT's name change to the Consumer Advocate and the commission.

5. This docket is closed unless otherwise ordered by the commission.

DONE at Honolulu, Hawaii JAN - 5 2007.

PUBLIC UTILITIES COMMISSION
OF THE STATE OF HAWAII

By Carlito P. Caliboso
Carlito P. Caliboso, Chairman

By John E. Cole
John E. Cole, Commissioner

APPROVED AS TO FORM:

Benedyne S. Stone
Benedyne S. Stone
Commission Counsel

2006-0433.eh

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Decision and Order No. 23182 upon the following parties, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such party.

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DATED: JAN - 5 2007